



## **DRA**

*Division of Ratepayer Advocates  
California Public Utilities Commission*

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**Dana Appling, Director**

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August 10, 2009

Honesto Gatchalian  
CPUC, Energy Division  
Attention: Tariff Unit  
505 Van Ness Avenue,  
San Francisco, CA 94102

**Subject: Protest to SCE's Advice Letter 2364-E; Request for Approval of  
Competitive Solicitation Process and Criteria for 250 Megawatts of  
Southern California Edison's Solar Photovoltaic Program and Draft  
Standard Power Purchase Agreement**

Dear Mr. Gatchalian:

On July 20, 2009, Southern California Edison Company (SCE) submitted Advice Letter (AL) 2364-E, which proposes a Competitive Solicitation Process and Criteria for 250 Megawatts of Southern California Edison's Solar Photovoltaic Program and Draft Standard Power Purchase Agreement (PPA) per Decision 09-06-049. The Division of Ratepayer Advocates (DRA) hereby protests AL 2364-E and recommends that the Commission modify the SCE's proposed solicitation by ordering SCE to modify their proposed draft standard PPA as follows:

- (1) Deny SCE's proposal to add a Price Improvement Period addition to the competitive Request for Offers (RFO) process. This suggested change could have an adverse effect on the bidding process and the proposed practice has not been fully vetted through the R.08-08-009 RPS proceeding.
- (2) Require SCE to provide additional information on its "Reverse Auction" proposal. At the Solar PV PPA workshop, SCE discussed the Solar PV PPA RFO as a "Reverse Auction" though the instant Advice has no mention of that program design aspect. SCE should elaborate on the details of a "Reverse Auction" and how it differs with the traditional Renewable Portfolio Standard (RPS) competitive solicitations that parties are more familiar with.
- (3) Order SCE to provide sufficiently detailed information regarding the preferred location for solar PV facilities (e.g., down to the substation level and/or distribution line segment) rather than SCE's proposal to provide this

information at the zip code level. This could promote more beneficial and less costly Independent Power Producer (IPP) installations.

- (4) Require SCE to use an Independent Evaluator (IE) for all Solar PV RFOs for the five years of the program. This will enhance transparency and ensure fairness for each RFO, as well as, allow participation of a wider range of bidders, including utility affiliates.
- (5) Order sufficient controls (e.g., cross-program checks) for both the SCE Solar PV PPA Program and California Solar Initiative (CSI) Program to ensure that the Generator or building owner can not submit any claim for CSI funds for the Generating Facility or any modifications to the Generating Facility that is being bid into SCE's Solar PV bidding process.
- (6) Order SCE to modify their proposed draft standard PPA to balance the program goals of simplifying and streamlining the contracting process and encouraging higher viability projects. Specifically:
  - a) Where there is not a substantial justification for requiring additional change(s), the standard power purchase agreement should be identical in terms and conditions with SCE's California Renewable Energy Small Tariff (CREST) agreement, which is SCE's version of the AB 1969 and SB 380 feed-in tariff contract per Commission order.<sup>1</sup>
  - b) Delete the overly prescriptive section 7.17 (i.e., contractor and subcontractor requirements) of Edison's Draft Standard PPA as this section is not necessary or included in SCE's CREST contract.
  - c) Eliminate the buy-out option based on the overwhelming negative response to this addition at the SCE Solar PV PPA workshop and potential conflict of Producers not being eligible for the Investment Tax Credit (ITC) as a result of being subject to the buy-out option.
  - d) Based on potential feedback on this instant Advice Letter, determine whether SCE's interconnection and WDAT PPA requirement is appropriate or too onerous. If found beneficial, consider implementing this requirement in the feed-in tariff PPAs.
  - e) Based on potential feedback on this instant Advice Letter, determine whether SCE's increase of the Umbrella/excess liability insurance requirement to \$4 Million is appropriate or will be too onerous or add too much cost to the PPAs. If found beneficial, consider implementing this requirement in the feed-in tariff PPAs. Also consider adding a self-insurance option (as included in Section 9.6 of the CREST agreement).

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<sup>1</sup> D.09-06-049, Ordering Paragraph No. 2, pp. 58-59 and p. 41 (requiring SCE to model the Solar PV Program's PPA contract after the existing AB 1969 standard offer contract).

- f) Consider the possibility of increasing the development security deposit from \$20/kW to \$30/kW in order to encourage contracting with viable renewable energy developers.

## **1. BACKGROUND**

On March 27, 2008 SCE filed Application 08-03-015 requesting Commission authority to own, install, operate and maintain 250 megawatts (MW) of utility-owned solar PV generating facilities (UOG), with individual units 1 to 2 MW range, to be located on warehouse and commercial building rooftops within SCE's service territory. On June 22, 2009, the California Public Utilities Commission (Commission) issued D.09-06-049 which authorized SCE to implement its requested 250 MW of UOG, as well as an additional 250 MWs to be owned, installed, operated, and maintained by independent power producers (IPPs) for which SCE is to seek competitive offers.<sup>2</sup>

Specifically, with respect to the IPP portion of the Solar PV Program, D.09-06-049 authorized 250 megawatt of distributed generation owned by IPPs (about 50 megawatt annually) to be solicited at least once per year. The bids capped at SCE's estimated levelized costs of electricity (\$260/MWh). An Independent Evaluator will be secured to oversee the solicitation for the first two years of the program and thereafter if a utility affiliate participates in the solicitation. Contracts will be based on a standard 20-year PPA contract modeled after the existing Assembly Bill (AB) 1969 standard offer contract (Feed-in Tariff or FiT).<sup>3</sup>

The Commission ordered that within 30 days of the effective date of the decision (i.e., June 18, 2009), SCE shall file an Advice Letter with the Energy Division delineating the criteria and process for evaluating offers received and containing a draft standard 20-year power purchase agreement contract for use in the request for offer.<sup>4</sup>

## **2. DISCUSSION**

### **THE COMMISSION SHOULD SPECIFY THE DESIGN OF SCE'S SOLAR PPA RFO AND DRAFT STANDARD CONTRACT CONSISTENT WITH THE COMMISSION'S GOALS ENVISIONED FOR THE SOLAR PPA PROGRAM**

SCE AL 2364-E provides a straw proposal of a solar PV PPA RFO and draft standard contract. Though DRA appreciates SCE's efforts to facilitate the Commission's order in D.09-06-049, Staff should be cognizant that the solar PV PPA RFO is completely a Commission-devised aspect

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<sup>2</sup> D.09-06-049, Ordering Paragraph No. 1, p. 58.

<sup>3</sup> D.09-06-049, Ordering Paragraph No. 2, pp. 58-59 and p. 41 (requiring SCE to model the Solar PV Program's PPA contract after the existing AB 1969 standard offer contract).

<sup>4</sup> *Id.*

to SCE's program. It is important to note that during the entire time that SCE's application was being litigated, SCE has never presented direct testimony, rebuttal testimony, opening briefs or reply briefs regarding an IPP PPA portion of their Solar Program. In fact, SCE's position during the evidentiary stage of the proceeding was that they were not proposing an IPP PPA component to their solar PV program. D.09-06-049 is the first place that mentions a 250 MW IPP aspect of the Solar PV Program and how it will be structured and implemented. Given that history, the Commission and Staff should provide a high degree of scrutiny concerning the design and implementation of the IPP PPA component of SCE's Solar PV program. While the instant Advice provides a good starting point, the Commission should fine tune the design of this IPP PPA program to achieve the goals envisioned by the Commission, specifically, to encourage competitive procurement and use of standard contracts (i.e., AB 1969 standard offer contract) to expedite the review process.<sup>5</sup> Further, given that the other Investor Owned Utilities (IOUs) are proposing solar PV programs of their own and State demand for an expanded feed-in tariff is growing, the Commission should authorize a Solar PPA program design that could facilitate a common Solar PV PPA RFO and Contract approach that could be used by all IOUs and incorporate elements that help facilitate the design of a state-wide expanded FiT program.

In the instant Advice Letter, SCE has strayed from the goals specified by the Commission, through additions to the RFO process, proposing overly general locational information on siting IPP facilities, and a more lengthy and onerous standard contract as compared to SCE's current CREST FiT contract. For example, SCE's proposed draft Solar PV standard contract is 50% longer than SCE's CREST contract. DRA recommends the following changes to improve SCE's Solar PV PPA Program.

#### **DENY SCE'S PROPOSED PRICE IMPROVEMENT PERIOD ADDITION TO THE COMPETITIVE RFO**

Advice 2364-E proposes the use of a multi-round RFO selection process or a "price improvement period" where bidders that have not been selected for the short list will be given the opportunity to "sweeten their deal."<sup>6</sup> SCE presented this RFO modification at the SCE Solar PV PPA Workshop to near-unanimous disapproval. Parties brought up several issues that could arise using this method. One of DRA's main concerns with this proposal is that bidders may feel compelled to lower their initial bid to a level where their project is no longer viable.

DRA recommends that rather than test this questionable RFO process modification in the SCE Solar PV PPA Program SCE should consider introducing the concept of a price improvement period as part of their annual RPS Procurement Plan, to be filed this fall. That way parties will have ample opportunity to vet the proposed change and the Commission will be able to consider this significant change to the bidding process through an appropriate venue. An advice letter

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<sup>5</sup> D.09-06-049, pp. 16, 41.

<sup>6</sup> Advice 2364-E, pp. 6, Appendix A.

compliance filing is not the appropriate vehicle to make such a significant change to the RFO process.

**REVERSE AUCTION DETAILS ARE REQUIRED AS IS ANY ADOPTED DETAILS DISCUSSED AT THE WORKSHOP BUT NOT INCLUDED IN THE INSTANT ADVICE LETTER**

At the Solar PV PPA workshop, SCE discussed the Solar PV PPA competitive solicitation as a “Reverse Auction” though the instant Advice Letter does not include or describe a reverse auction process. SCE should elaborate on the details of a “Reverse Auction” and how it differs with the traditional RPS competitive solicitations that parties are more familiar with. In addition, any other adopted details that were discussed at the workshop but not included in the instant Advice Letters should also be fully described.

**ORDER SCE TO PROVIDE MORE DETAILED INFORMATION ON LOCATIONS WHERE SOLAR PV FACILITIES WOULD BE MOST BENEFICIAL AND LESS COSTLY**

Advice Letter 2364-E specifies that SCE will provide a list of zip codes which identify preferred locations for Solar PV facilities.<sup>7</sup> At the workshop, SCE stated that due to Homeland Security issues, they cannot provide any more detailed location information. DRA does not find SCE’s claim convincing, and recommends that the Commission require SCE to reconsider and determine how more detailed location information can be provided (e.g., down to the substation level and/or distribution line segment). There were several suggestions made at the workshop to facilitate the development of this information including a database or website where location addresses or GPS information can be provided by the bidders and results regarding benefits and interconnection costs could be approximated. By providing IPPs with similar system interconnection information as SCE is privy to, the Commission could encourage the siting of facilities where system benefits are maximized, potentially postpone or eliminate distribution upgrades, and encourage less costly PPA installations, which should benefit of ratepayers .

**ORDER SCE TO USE AN INDEPENDENT EVALUATOR FOR ALL SOLAR PV PPA RFOs FOR THE ENTIRE FIVE YEARS OF THE PROGRAM**

Advice Letter 2364-E correctly cites D.09-06-049 as specifying an IE should be secured to oversee the solicitation for the first two years of the program and thereafter if a utility affiliate participates in that process. DRA recommends that the Commission require an IE for all SCE Solar PV PPA RFOs for the entire five years of the program. This requirement will enhance transparency and ensure fairness for each RFO which is essential given that SCE’s UOG project costs will be compared to IPP project costs for each of the five years of the program.<sup>8</sup> Also,

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<sup>7</sup> Advice 2364-E, p. 4.

<sup>8</sup> D.09-06-049, Ordering Paragraph No. 4, p. 59 and p. 49. SCE shall file an annual compliance report in this proceeding.

D.09-06-049 makes an apparent error suggesting that an IE can be introduced into an RFO midstream at the time that a utility affiliate enters an RFO bid. Typically, an IE is introduced before an RFO is launched to ensure the entire process of the RFO was handled fairly, including the RFO launch, RFO conference, Q&A results, and receiving offers. So to determine an IE will not be used in an RFO would essentially disallow utility affiliates to participate in an RFO thus reducing the pool of bidders and potentially lower cost bids to the detriment of the ratepayer. To remedy these potential issues, Staff should simply require an IE for all SCE Solar PV PPA RFOs.

### **ORDER SCE TO IMPLEMENT SUFFICIENT CONTROLS IN BOTH THE SCE SOLAR PV PPA PROGRAM AND CSI TO ENSURE PRODUCERS CANNOT SUBMIT CLAIMS FOR CSI FUNDS**

Advice Letter 2364-E claims that roof owners will be required to sign a commitment not to apply for CSI funding for facilities that are being bid through SCE's Solar PV Program.<sup>2</sup> In addition to requiring a commitment from bidders, DRA recommends that the Commission order SCE to perform cross checks for both the SCE Solar PV PPA Program and CSI)Program to ensure that the Producer can not submit any claim for CSI funds for the Generating Facility or any modifications to the Generating Facility. SCE is the CSI administrator for their service territory and SCE will administer their Solar PV PPA Program so it is not unreasonable to require cross-checks for both programs to insure this program requirement is satisfied.

### **ORDER SCE TO MODIFY THEIR PROPOSED DRAFT STANDARD PPA TO SIMPLIFY, STREAMLINE, AND ENCOURAGE HIGHER VIABILITY PROJECTS**

Advice Letter 2364-E strays from the goals specified by the Commission by proposing a more lengthy and onerous standard contract than SCE's current CREST FiT contract. For example, SCE's proposed draft Solar PV Standard Contract is 50% longer than SCE's CREST contract.<sup>10</sup> D.09-06-049 ordered SCE to model the SCE Solar PV Contract on SCE's version of the AB 1969 and SB 380 feed-in tariff contract (i.e., CREST contract).<sup>11</sup> DRA recommends that the Commission adopt a contract that is identical to the CREST in terms and length. The SCE Solar PV PPA contract should be simple and streamlined and not overly prescriptive or onerous. This will provide developers a FiT-like contract that will encourage participation in the program. In addition, the following changes to SCE's Solar PV PPA standard contract should be ordered:

- Delete the overly prescriptive section 7.17 (i.e., contractor and subcontractor requirements) of Edison's Draft Standard PPA as this section is not necessary or included in their CREST contract.

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<sup>2</sup> Advice 2364-E, p. 7.

<sup>10</sup> SCE Crest FiT Contract is 10 pages long. SCE's Draft Solar PV PPA is 15 pages long.

<sup>11</sup> D.09-06-049, Ordering Paragraph No. 2, pp. 58-59 and p. 41 (requiring SCE to model the Solar PVProgram's PPA contract after the existing AB 1969 standard offer contract).



- Eliminate the buy-out option based on the overwhelming negative response to this addition at the SCE Solar PV PPA workshop and potential conflict of Producers not being eligible for the Investment Tax Credit (ITC) as a result of being subject to the buy-out option.
- Based on potential feedback on this instant Advice, determine whether SCE's interconnection and WDAT PPA requirement is appropriate or too onerous. If found beneficial, consider implementing this requirement in the feed-in tariff PPAs.
- Based on potential feedback on this instant Advice Letter, determine whether SCE's increase of the umbrella/excess liability insurance requirement to \$4 Million is appropriate or will be too onerous or too costly to the PPA price. If found beneficial, consider implementing this requirement in the feed-in tariff PPAs. Also consider adding a self-insurance option (as included in Section 9.6 of the CREST agreement).
- If it is not considered too onerous, in order to focus contracting with more viable renewable energy developers, consider increasing the development security deposit from \$20/kW to \$30/kW. This increase would be consistent with other RPS PPA contract terms and would require bidders to place more "skin in the game" which should result in more viable bids.

Sincerely,

/s/ CYNTHIA WALKER

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Cynthia Walker  
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